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DEPARTMENT OF COMMERCE

International Trade Administration

[A-549-821]

Polyethylene Retail Carrier Bags from Thailand: Notice of Court Decision Not in Harmony with Final Results of Administrative Review and Notice of Amended Final Results of Administrative Review; 2008-2009

AGENCY: Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce.

SUMMARY: On February 11, 2013, the U.S. Court of International Trade (CIT) sustained the Department of Commerce's (the Department's) final results of remand redetermination pursuant to the CIT's remand order.<sup>1</sup> Consistent with the decision of the U.S. Court of Appeals for the Federal Circuit (CAFC) in *Timken Co., v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), as clarified by *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*), the Department is notifying the public that the final judgment of the CIT in this case is not in harmony with the Department's final results of administrative review of the antidumping duty order on polyethylene retail carrier bags (PRCBs) from Thailand covering the period of review (POR) of August 1, 2008 through July 31, 2009, and is amending its final results of this review with respect to the weighted-average dumping margins calculated for Thai Plastic Bags Industries Company (TPBI).<sup>2</sup>

DATED: EFFECTIVE DATE: February 21, 2013.

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<sup>1</sup> See *Thai Plastic Bags Industries Co., Ltd., v. United States*, 895 F. Supp. 2d 1337 (CIT 2013) ("*Thai Plastic Bags IP*"); *Results of Redetermination Pursuant to Court Remand, Thai Plastic Bags Industries Co., Ltd., Polyethylene Retail Carrier Bag Committee, Hilex Poly Co., LLC, and Superbag Corporation, v. United States*, Consol. Court No. 11-00086, dated September 14, 2012 (*Remand Results*).

<sup>2</sup> See *Polyethylene Retail Carrier Bags From Thailand: Final Results of Antidumping Duty Administrative Review*, 76 FR 12700 (March 8, 2011) (*Final Results*).

FOR FURTHER INFORMATION CONTACT: Thomas Schauer, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0410.

SUPPLEMENTARY INFORMATION:

The Department published the final results of the 2008-2009 administrative review of the antidumping duty order on PRCBs from Thailand on March 8, 2011. Both Thai Plastic Bags Industries Co., Ltd., (TPBI) and the Polyethylene Retail Carrier Bag Committee (and its individual members, Hilex Poly Co., LLC and Superbag Corp. (collectively, the petitioner)) timely filed complaints with the CIT to challenge various aspects of the *Final Results*. On June 18, 2012, the CIT remanded for the Department to provide further explanation for its construction of section 771(35) of the Tariff Act of 1930, as amended (the Act), with respect to antidumping duty investigations and administrative reviews and to reconsider its position regarding the application of the transactions disregarded rule to TPBI's purchases of linear-low-density resin from affiliated suppliers.<sup>3</sup>

On September 14, 2012, the Department filed the *Remand Results* with the CIT, in which the Department provided further explanation for its construction of section 771(35) of the Act, with respect to antidumping duty investigations and administrative reviews, reconsidered its position regarding the application of the transactions disregarded rule to TPBI's purchases of linear-low-density resin from affiliated suppliers, and revised its treatment of those transactions. Accordingly, the Department recalculated TPBI's weighted-average dumping margin from 20.15 percent to 21.29 percent. On November 13, 2013, the CIT affirmed the Department's *Remand Results*.<sup>4</sup>

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<sup>3</sup> See *Thai Plastic Bags Industries Co., Ltd., v. United States*, 853 F. Supp. 2d 1267 (CIT 2012) (*Remand Order*).

<sup>4</sup> See *Thai Plastic Bags II*, 895 F. Supp. 2d at 1345.

TPBI appealed the CIT's decision to the CAFC. On March 31, 2014, the CAFC affirmed the Department's *Remand Results*.<sup>5</sup> The CAFC's holding is now final and conclusive.

#### Timken Notice

In its decision in *Timken*, 893 F.2d at 341, as clarified by *Diamond Sawblades*, the Federal Circuit held that, pursuant to section 516A(e) of the Act, the Department must publish a notice of a court decision not "in harmony" with a Department determination, and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's February 11, 2013, judgment constitutes a final decision of the CIT that is not in harmony with the Department's *Final Results*. This notice is published in fulfillment of the publication requirement of *Timken*.

#### Amended Final Results

For the reasons stated above, the Department is amending its *Final Results* with respect to TPBI's weighted-average dumping margin for this POR. The revised weighted-average dumping margin for TPBI is 21.29 percent.

Accordingly, the Department will instruct United State Customs and Border Protection (CBP) to liquidate entries of subject merchandise by TPBI in accordance with 19 CFR 351.212(b)(1).<sup>6</sup> Because the order on PRCBs from Thailand was revoked in part with respect to TPBI effective July 28, 2010,<sup>7</sup> we will not instruct CBP to collect cash deposits for entries of subject merchandise by TPBI.

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<sup>5</sup> See *Thai Plastic Bags Industries Co., Ltd., v. United States*, 746 F.3d 1358 (Fed. Cir. 2014).

<sup>6</sup> See *Final Results*, 76 FR at 12701-2.

<sup>7</sup> See *Notice of Implementation of Determination Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Order on Polyethylene Retail Carrier Bags From Thailand*, 75 FR 48940 (August 12, 2010).

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: July 15, 2015.

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Paul Piquado,  
Assistant Secretary  
for Enforcement and Compliance.

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